

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

**ANGELA R. STARNES**

## Claimant

V.

**ALDI, INC.**

Respondent

AND

**PHOENIX INSURANCE COMPANY**

Insurance Carrier

Docket No. 1,028,498

## ORDER

Claimant requests review of the September 3, 2015, Order Denying Medical Treatment entered by Special Administrative Law Judge (SALJ) Jerry Shelor.

## APPEARANCES

John J. Bryan, of Topeka, Kansas, appeared for the claimant. Katharine M. Collins, of Overland Park, Kansas, appeared for respondent and its insurance carrier (respondent).

## RECORD AND STIPULATIONS

The Board has considered the same stipulations and same record as the SALJ, consisting of the Preliminary Hearing transcript of July 31, 2008, the Preliminary Hearing transcript of April 12, 2007, the Settlement Hearing transcript of July 23, 2009, with attachments, the Post-Award Hearing transcript of August 31, 2015, with attachments and the documents of record filed with the Kansas Workers Compensation Division.

## ISSUES

The SALJ, in an Order dated September 3, 2015, denied claimant's request for medical treatment, finding there was insufficient evidence establishing claimant's need as it relates to claimant's work injuries from October 3, 2005.

Claimant appeals, arguing her symptoms and pain are worse since she last saw Joseph F. Galate, M.D., leaving her in need of medical treatment to relieve her pain. Claimant also contends that her uncontroverted testimony supports her need for additional

medical treatment to relieve her back and neck pain. Claimant requests medical treatment with Glenn M. Amundson, M.D., or Joseph G. Sankoorikal, M.D., arguing there is no statute mandating a report as a prerequisite to being provided medical care by the workers compensation system.

Respondent argues the SALJ's September 3, 2015, Order should be affirmed. Respondent contends the medical evidence in the record states treatment is not now necessary for an injury that occurred ten years ago. Therefore, claimant should be denied additional medical treatment.

The issue on appeal is whether claimant is entitled to additional medical treatment or palliative care for her increasing back, neck and upper extremity pain attributable to her October 3, 2005, work accident.

#### **FINDINGS OF FACT**

On October 3, 2005, claimant suffered injury involving her neck and low back, with symptoms in her arms. Claimant had a variety of treatments and underwent neck surgery with Dr. Amundson on July 9, 2007. Dr. Amundson performed a C6-7 cervical discectomy and fusion, which was beneficial. On August 22, 2007, claimant reported being essentially pain free. Claimant also requests treatment for low back symptoms. At the October 10, 2007, examination, Dr. Amundson discussed an updated MRI which displayed degenerative discs at L4-5 and L5-S1. The MRI indicated a protrusion central to left, at L5-S1 and a cyst at S1-2. Dr. Amundson expressed surprise at the right side leg complaints and complete absence of left sided symptomatology. A repeat MRI in May 2008 again displayed the cyst and a central disc herniation to the left at L5-S1, again without left side complaints. There was, again, no explanation for claimant's right side complaints. A followup visit on October 3, 2008, detailed an invalid FCE for effort and consistency. Dr. Amundson felt no additional surgery or treatment was warranted at that time. Dr. Amundson released claimant from his care in October 2008 after finding claimant at maximum medical improvement (MMI).

Claimant was examined by Dr. Sankoorikal on multiple occasions in 2006 and 2007. In his report of January 9, 2007, Dr. Sankoorikal described claimant with the disc bulge at C6-7 and mild degenerative disc disease at L5-S1. The lumbar component was listed as nonwork-related.

A settlement hearing was held on July 23, 2009, at which time claimant settled her claim for a 50 percent work disability. Claimant received a lump sum of \$50,000. The option for future medical was left open.

Claimant underwent numerous examinations with a multitude of health care providers over a several year period. The most recent examination came under the care of Joseph F. Galate, M.D., on April 17, 2014. Dr. Galate's report of that date details

claimant's treatment history and his examination regarding her physical complaints. Dr. Galate determined claimant's cervical problems stemmed from the work accident on October 3, 2005. He determined claimant was not in need of further medical treatment for her injuries. His report states claimant's medical care had "exceeded appropriate treatment for this injury."<sup>1</sup>

Claimant has not seen a doctor since the April 17, 2014, examination with Dr. Galate. Claimant indicated she is in need of additional treatment and contends Dr. Galate's report differs from what was explained to her at the visit. Claimant also testified that Dr. Amundson told her she needed back surgery, but that she should wait for as long as she could.

Claimant testified that, since her release from care, her problems have worsened. Currently, claimant has burning around her neck and down her right arm, into her fingertips. She testified that when she was first injured she had pain up the back of her neck, over the top of her head and into her right eyeball. She also had symptoms in the area between her shoulder blades and the chest and had headaches everyday.

Claimant testified some days are better than others, but she has difficulty holding onto things and with holding her arms outstretched. Trying to pick up any kind of weight makes her pain worse. Claimant denies any problems with her neck or back before the accident. Claimant also denies that, prior to the accident, she had any headaches like what she is having now.

Claimant indicated she smokes marijuana to help calm her, which helps to relax her back when it freezes up, when, she contends, she is unable to move for up to ten minutes. Claimant could not say the epidural injections she received provided any relief, but the physical therapy she received from Dr. Sankoorikal did help.

On January 12, 2015, and July 6, 2015, applications for a preliminary hearing and post-award medical hearing were filed, with the issue in both being additional medical treatment. A hearing was held in both on August 31, 2015. The SALJ issued two decisions, a preliminary Order dated September 3, 2015 and a Post-Award Medical Award dated September 14, 2015, both denying claimant additional medical treatment.

#### **PRINCIPLES OF LAW AND ANALYSIS**

In workers compensation litigation, it is the claimant's burden to prove his or her entitlement to benefits by a preponderance of the credible evidence.<sup>2</sup>

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<sup>1</sup> P.A.H. Trans. Cl. Ex. 3 at 7.

<sup>2</sup> K.S.A. 2005 Supp. 44-501 and K.S.A. 2005 Supp. 44-508(g).

The burden of proof means the burden of a party to persuade the trier of fact by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.<sup>3</sup>

K.S.A. 2005 Supp. 44-510h(a) states:

(a) It shall be the duty of the employer the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, and medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515 and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

It is respondent's duty to provide appropriate medical treatment for a work-related injury. However, it is claimant's burden to show the requested treatment is reasonably necessary and stems from the original accident, and not subsequent physical problems. In this matter, claimant has failed to show a connection between her current request for medical treatment and the accident in 2005. Claimant's treating physician, Dr. Amundson, found claimant to be at MMI and no longer in need of medical treatment in 2008. Dr. Galate, the health care professional to last examine claimant, determined she had been provided appropriate medical care and any current medical needs were not related to the 2005 accident.

In this instance, claimant has failed to satisfy her burden that the current request for medical treatment stems from the 2005 work-related injuries. The Order of the SALJ denying additional medical treatment is affirmed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>4</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2014 Supp. 44-551(l)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

### **CONCLUSIONS**

After reviewing the record compiled to date, the undersigned Board Member concludes the preliminary hearing Order should be affirmed. Claimant has failed to satisfy

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<sup>3</sup> *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984).

<sup>4</sup> K.S.A. 2013 Supp. 44-534a.

her burden of showing the requested medical treatment stems from the 2005 work-related accident.

**DECISION**

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member that the Order Denying Medical Treatment of Special Administrative Law Judge Jerry Shelor dated September 3, 2015, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of November, 2015.

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HONORABLE GARY M. KORTE  
BOARD MEMBER

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Jerry Shelor, Special Administrative Law Judge